

### REMARKS

Applicant submits that the restriction requirement related to species selection is improper. The PTO has long permitted applicants to define a genus or subgenus by enumerating species within the genera--the so-called Markush claim format. As such, the Office cannot require an application under the guise of Section 121, to divide up the embodiments of a single Markush claim. While Section 121 gives the PTO authority to restrict between claims of an application, it does not provide authority to reject a single claim on that basis. *In re Weber* 580 F.2d 455 at 458.


MPEP Section 803.02 advises Examiners that they should not refuse to examine a Markush claim that describes what applicants regard as their invention, unless the subject matter in the claim lacks unity of invention.

In addition to the foregoing, Applicant further traverses on the grounds that the Markush claims include sufficiently few species that such a search and examination of each of the two groups of species (one group all biological and the other group all inorganic metal oxides) at one time would not impose a serious burden on the Examiner.

An earnest attempt has been made by the Applicant in responding to the October 12, 2006 Restriction requirement. While election has been made, Applicant respectfully requests that the Examiner reconsider her restriction request. If a telephone interview would expedite examination of the application, the Examiner is urged to contact the undersigned.

Respectfully submitted,

**CHERSKOV & FLAYNIK**

BY   
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